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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,494	02/27/2004	William Daniel Willey	0108-0244/2	7431
33787 7590 02/22/2008 JOHN J. OSKOREP, ESQ. ONE MAGNIFICENT MILE CENTER 980 N. MICHIGAN AVE. SUITE 1400 CHICAGO, IL 60611			EXAMINER MURPHY, RHONDA L	
			ART UNIT 2616	PAPER NUMBER
			MAIL DATE 02/22/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/788,494	Applicant(s) WILLEY ET AL.	
	Examiner Rhonda Murphy	Art Unit 2616	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This communication is responsive to the Request for Continued Examination (RCE) filed on 1/30/08. Accordingly, claims 1-30 are currently pending in this application.

### ***Response to Arguments***

1. Applicant's arguments, filed 1/30/08, with respect to the rejection(s) of claim(s) 1-30 under 35 USC 102 (e) and 103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 – 7 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Chowdhury (US 2004/0266450 A1).

**Regarding claims 1**, Chowdhury teaches a method of controlling wireless network operations associated with a flow control process of a wireless communication network,

the flow control process being operative to terminate data communication to a mobile station based on detection of an out-of-coverage condition between the mobile station and the wireless communication network (page 4, paragraph 35; mobile station is currently out of the radio coverage...wireless session has been effectively terminated), the method comprising the acts of: identifying, by a network processor (PDSN 16), an indication which indicates whether the mobile station or AN application thereof utilizes an always-on connection for a data service provided via the wireless communication network (page 2, paragraph 19; PDSN 16 determines whether a mobile station is an always on mobile station); causing, by the network processor, the flow control process to be bypassed for the mobile station based on the indication indicating that the mobile station or the application thereof utilizes the always-on connection for the data service (page 4, paragraph 38); and otherwise, allowing the flow control process to be performed for the mobile station based on the indication indicating that the mobile station or the application thereof fails to utilize the always-on connection (page 4, paragraph 35).

**Regarding claim 2**, Chowdhury teaches the method of claim 1, wherein the always-on connection comprises a Point-to-Point Protocol (PPP) session (page 2, paragraph 19).

**Regarding claim 3**, Chowdhury teaches the method of claim 1, wherein the always-on connection is utilized for a data service comprising an e-mail communication service (page 2, paragraph 17).

**Regarding claim 4**, Chowdhury teaches the method of claim 1, further comprising:  
wherein the act of identifying comprises receiving the indication based on data  
associated with the mobile station or the data service (page 2, paragraph 19).

**Regarding claim 5**, Chowdhury teaches the method of claim 1, further comprising:  
wherein the act of identifying comprises receiving the indication from the mobile station  
through the wireless communication network (page 2, paragraph 19).

**Regarding claim 6**, Chowdhury teaches the method of claim 1, further comprising:  
wherein the act of identifying comprises receiving the indication from the mobile station  
through the wireless communication network in response to an input signal at a user  
interface of the mobile station (page 2, paragraph 20; PDSN 16 sends an echo request  
message and the mobile station replies to the echo request).

**Regarding claim 7**, Chowdhury teaches the method of claim 1, further comprising:  
wherein the act of identifying the indication comprises identifying the always-on  
connection based on data associated with the data service (page 2, paragraph 19).

**Regarding claim 10**, Chowdhury teaches the method of claim 1, wherein the data  
service is one data service of a plurality of data services concurrently utilized by the  
mobile station (page 2, paragraph 17).

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all  
obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set  
forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 8 and 11 – 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chowdhury (US 2004/0266450 A1).

**Regarding claim 8**, Chowdhury teaches the method of claim 1, but fails to explicitly teach wherein the act of identifying the indication comprises identifying a relatively low data rate of the data service.

However, Chowdhury does disclose identifying activity of the mobile station. It is known in the art for data rate is one factor that determines activity of a mobile station. Therefore, it would have been obvious to one skilled in the art to identify a data rate, for the purpose of determining mobile station activity.

**Regarding claims 11 and 21**, Chowdhury teaches the same limitations described above in the rejection of claim 1. Chowdhury further teaches a Radio Access Network Fig. 1; radio access network 14) comprising: a Packet Service Data Node (PDSN 16); a

Packet Control Function (PCF) adapted to communicate with a PDSN (page 2, paragraph 15) and the PCF operative to perform the functions described above in the rejection of claim 1 (page 4, paragraph 37).

Chowdhury fails to explicitly teach the PCF identifying whether the mobile station or application thereof utilized an always-on connection.

However, Chowdhury teaches this function performed by the PDSN, via the PCF.

Thus, it would have been obvious to one skilled in the art to determine the PCF can perform the function, by way of the PDSN, since information is communication through the PCF to the PDSN (page 2, paragraph 15).

**Regarding claims 12 and 22**, Chowdhury teaches the same limitations described above in the rejection of claim 2.

**Regarding claims 13 and 23**, Chowdhury teaches the same limitations described above in the rejection of claim 3.

**Regarding claims 14 and 24**, Chowdhury teaches the same limitations described above in the rejection of claim 4.

**Regarding claims 15 and 25**, Chowdhury teaches the same limitations described above in the rejection of claim 5.

**Regarding claims 16 and 26**, Chowdhury teaches the same limitations described above in the rejection of claim 6.

**Regarding claims 17 and 27**, Chowdhury teaches the same limitations described above in the rejection of claim 7.

**Regarding claims 18 and 28**, Chowdhury teaches the same limitations described above in the rejection of claim 8.

**Regarding claims 19 and 29**, Chowdhury teaches the same limitations described above in the rejection of claim 9.

**Regarding claims 20 and 30**, Chowdhury teaches the same limitations described above in the rejection of claim 10.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chowdhury (US 2004/0266450 A1) as applied to claim 1 above, and further in view of Thielke et al. (US 2007/0223408 A1).

**Regarding claim 9**, Chowdhury teaches the method of claim 1, but fails to explicitly disclose wherein the act of identifying the indication comprises identifying a predetermined Quality of Service (QoS) associated with the data service.

However, Thielke teaches wherein the act of identifying the indication comprises identifying a predetermined Quality of Service (QoS) associated with the data service (page 1, paragraph 8).

Thus, it would have been obvious to one skilled in the art to identify quality of service associated with the data service, in order to determine service conditions.



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**Conclusion**


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rhonda Murphy whose telephone number is (571) 272-3185. The examiner can normally be reached on Monday - Friday 9:00 - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571) 272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rhonda Murphy  
Examiner  
Art Unit 2616

RM

  
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